

Chandan Bilasini (Smt) (Dead) By Lr.

Vs

Aftabuddin Khan and Others

(Civil Appeal No. 1245 of 1977) with Aftabuddin Khan and Others

Vs

Amaresh Sarkar and Another

Civil Appeals No. 1245 of 1977 with No. 2462 of 1977

(Sujata V. Manohar, M. M. Punchhi JJ)

16.11.1995.

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. Since the parties before us have already settled their property dispute, the only question which is left for us to decide is whether the respondent Amaresh Sarkar in Civil Appeal No. 2462 of 1977 was the duly adopted son of Chandan Bilasini Dasi, the original first plaintiff.

2. Chandan Bilasini Dasi was married to one Kalikrishna Sarkar who died on 11-12-1905 leaving a Will under which inter alia, he had authorised his widow, the original Plaintiff 1 to adopt a son and in the event of the adopted son's death, to adopt a second son. The adoption had to be made with the consent of the executors. Accordingly the first plaintiff had adopted one Sudhanshu Mohan Sarkar as per the directions contained in the Will of Kalikrishna. Sudhanshu Mohan Sarkar died in an unmarried state on 7-3-1965. Thereafter, she adopted the said respondent Amaresh Sarkar on 24-8-1965. By this time all the executors were dead. She also executed a registered deed acknowledging the adoption of Amaresh Sarkar which is dated 30-9-1965. This deed, however, was not countersigned by the natural parents of the adopted child. The natural father executed a deed acknowledging adoption which is dated 15-4-1967. This deed is also registered. Apart from these documents, evidence was led in order to prove the ceremony of giving and taking in adoption. It is necessary to bear in mind that this second adoption took place after coming into force of the Hindu Adoptions and Maintenance Act, 1956 under which the first plaintiff Chandan Bilasini Dasi being a widow was entitled to adopt a son even otherwise than under the authority given to her under the Will of her deceased husband.

3. PWs 1, 2 and 6 have given oral evidence relating to the adoption ceremony. PW 1, who is the natural father of the adoption son has given evidence to the effect that the adoption took place on 24-8-1965 and the ceremony of giving and taking in adoption was performed. A priest was also present and Kalasa Pooja Homa was performed. PW 2 is the priest who performed the adoption ceremony and PW 6 is an attesting witness to the deed of adoption which was executed by the adoptive mother on 30-9-1965. He was also present at the time of the adoption ceremony.

4. The first appellate court on the basis of the oral evidence as well as the two supporting documents held that there was a valid adoption of the respondent Amaresh Sarkar by the original Plaintiff 1. The Division Bench of the High Court in appeal, however, held that there was no valid adoption. It appears to have drawn an adverse inference on the basis of the fact that the adoptive mother who was alive at the time when the evidence was recorded by the trial court, had not examined herself. It is accepted by both sides that at the time when the evidence was recorded, the adoptive mother was a very old lady of 86 years of age and she was too old to be produced in court for giving evidence. The Division Bench failed to take into account the fact that there were three other witnesses who were present at the time of the adoption ceremony who were examined - one of them being the priest and the other one being a person who was also present at the time when the deed of admission of adoption was executed by the first plaintiff adoptive mother and was an attesting witness to the deed. The mere fact that some other persons who were also present at the adoption ceremony were not examined, cannot be considered as making the adoption doubtful. There is clear testimony relating to the ceremony of taking and giving the respondent Amaresh Sarkar in adoption as between the natural parents and the adoptive mother. The registered document regarding this adoption which was executed within a month of the adoption by the adoptive mother should also be given its due weight as evidence of adoption. There is also a second document executed by the natural father after a lapse of two years. Since the natural father would be interested in executing such a document which would give an advantage to his natural son, the same probative value may not be attached to the second document. But the earlier document which is executed by the adoptive mother must be given its due weight. It has been properly proved and is a registered document.

5. Looking to the entire evidence which is no record which goes to establish that adoption took place by the ceremony of giving and taking, we hold that there was a valid adoption of the respondent Amaresh Sarkar by the original first plaintiff Chandan Bilasini Dasi. After the coming into force of the Hindu Adoptions and Maintenance Act of 1956, this adoption was made in accordance with the provisions of the Hindu Adoptions and Maintenance Act.

6. On adoption of the respondent Amaresh Sarkar by the widow of the deceased Kalikrishna Sarkar, the adopted son Amaresh Sarkar served his ties with his natural family and became a part of the adoptive family. As such, Chandan Bilasini Dasi became his mother and Kalikrishna became his deceased father. Section 12 of the Hindu Adoptions and Maintenance Act clearly provides that an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. As a consequence, when a widow adopts a child, the child not merely acquires an adoptive mother but also acquires other relationships in the adoptive family, unless there is anything to the contrary in the Hindu Adoptions and Maintenance Act.

7. This position is reinforced by Section 14(4) which sets out that where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child. In other words, the family relationship gets crystallised as at the date of adoption. The child will be deemed to be the child of the parent who adopts the child and the existing or deceased spouse of that parent (as the case may be), if any, will be considered the child's father or mother. A spouse subsequently acquired by the adoptive parent becomes the step-parent of the adopted child. The adopted child, however, cannot divest any person of any property already vested in that person [Section 12(c)].

8. In the premises, we set aside the impugned judgment insofar as it holds that Amaresh Sarkar was

not the validity adopted son of Chandan Bilasini Dasi and Kalikrishna Sarkar. The appellants in Civil Appeal No. 2462 of 1977 have, through their counsel, agreed that the status of the respondent Amaresh Sarkar as adoptive son of late Shri Kalikrishna Sarkar and Chandan Bilasini Dasi is not disputed.

9. In Civil Appeal No. 1245 of 1977 the parties through their counsel have agreed that the appellant will not question the validity of the sale deed which is the subject-matter of this appeal and it is declared that the sale deed is valid and binding. Respondents will pay Rupees five lakhs to the appellant in full and final settlement of all his claims against the respondents. The respondents have requested for some time for making payment of this amount. We direct that 50% of the amount will be paid on or before 30-11-1995 and the balance amount will be paid on or before 31-3-1996.

10. The appeals are disposed of accordingly. In the circumstances, there will be no order as to costs.